

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)	
Application of Daufuskie Island Utility)	PROPOSED ORDER GRANTING
Company, Incorporated for Approval of an)	MOTION TO COMPEL PRODUCTION
Increase for Water and Sewer Rates, Terms and)	OF DOCUMENTS BY DAUFUSKIE
Conditions)	ISLAND UTILITY COMPANY, INC.
_____)	

Pursuant to Commission Order No. 2020-639, the Public Service Commission of South Carolina (“Commission”) held Oral Arguments on October 8, 2020, regarding the Motion to Compel (“ORS Motion”) filed by the South Carolina Office of Regulatory Staff (“ORS”). During the oral arguments ORS was represented by Andrew M. Bateman, Esquire, Daufuskie Island Utility Company, Inc. (“DIUC”) was represented by Tom Gressette, Esquire, and Bloody Point Property Owner’s Association, Haig Point Club and Community Association, Incorporated, and Melrose Property Owner’s Association, Incorporated (collectively referred to herein as the “POAs”) were represented by Jack Pringle, Esquire.

On June 29, 2020, ORS served on DIUC its first and continuing request for production of documents for the second remand proceeding. DIUC submitted a response on July 10, 2020, in which it alleged that ORS’s request for production of documents was in direct contradiction of a ruling of the South Carolina Supreme Court. *See* DIUC Response to ORS Motion, Exhibit B. Subsequently, ORS filed a Motion for Clarification with the Commission seeking to determine whether the Commission sought to have ORS continue its investigatory review or cease to conduct any further review of DIUC and allow the Commission to rely upon the record as it stood at the

time. *See* ORS Motion for Clarification, filed with the Commission on July 14, 2020. On July 22, 2020, in response to the ORS Motion for Clarification, the Commission issued Order No. 2020-246, in which it requested that ORS continue its investigatory review of DIUC's rate case invoices.¹ In response, on July 23, 2020, counsel for ORS contacted counsel for DIUC via e-mail and "once again [reiterated] the [previously sent request] that all documentation that demonstrates payment of these invoices be provided." DIUC Response, p. 5. On July 24, 2020, ORS issued a second continuing request for production of documents for the second remand proceeding. DIUC submitted a response on August 7, 2020, in which it again made the same accusations against ORS and declined to provide a reconciliation of specific Guastella Associates, LLC ("GA") invoices that comprise the \$269,356, which the Company seeks recovery from ratepayers on remand and in this proceeding.² Response, Exhibit E. Accordingly, on August 17, 2020, ORS filed a Motion to Compel with this Commission in which ORS requested the Commission compel DIUC to provide, among other items, a reconciliation to identify the specific GA invoices that comprise the \$269,356 that DIUC seeks to recover as rate case expenses.

In its Motion and in order to comply with the Court's Remand Opinion, in which the Court required ORS to conduct an objective and measurable analysis, ORS argued that it first required

¹ Additionally, the Commission requested that ORS report its findings of the investigatory review back to the Commission within 30 days of the date of receipt of that Order. ORS filed a report detailing the findings of its investigation on August 21, 2020.

² During the Oral Arguments held on October 8, 2020, Counsel for DIUC asserted the Company seeks Commission approval for the total sum of \$542,978 in GA invoices. *See* Oral Argument Tr. p 49, ll. 8-18. The assertion by DIUC Counsel is contradicted by the direct testimony of Mr. John Guastella which states "the Commission should find and conclude that DIUC has incurred and should be allowed to include rate case expenses of \$269,356 for GA fees incurred through September 30, 2017. That leaves outstanding about one-half of the \$542,978 of GA fees invoiced through September 30, 2017, or \$272,622. DIUC would be permitted to apply for recognition of these expenses and its post-September 30, 2017 rate case expenses in its next rate case." Guastella Second Rehearing Direct Testimony p.11 lines 7-13; *See Also* Guastella Second Rehearing Direct Testimony, Exhibit JFG-RR1.

the ability to access and review the grouping of the individual GA invoices that comprise the requested \$269,356. *See* Oral Argument Tr. p. 18, ll. 9-19. South Carolina Code Ann. §§ 58-4-55 and 58-5-230, plainly state that ORS has a statutory right and obligation to examine a utility's records.³ ORS Motion, p. 3; *See* S.C. Code Ann. §§ 58-4-55 and 58-5-230. Moreover, South Carolina Code of Regulations §§ 103-517 and 103-719, declare that in addition to ORS having access to the utility's records, the utility must also be fully cooperative.⁴ ORS Motion, p. 3; S.C. Code Regs. §§ 103-517 and 103-719. Finally, according to a previous filing made by Mr. John Guastella, on behalf of Guastella Associates, if ORS requests company books, DIUC would provide them "to ORS either the same day or the next business day of its request." ORS Motion, p. 3; Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008. In that same filing, Mr. Guastella also committed that "[i]n the event of any investigation by the PSC or ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, we will make a full set of requested records available at a location in South Carolina that

³According to S.C. Code Ann. §58-4-55, "[t]he regulatory staff, in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information to be produced at the regulatory staff's office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought." According to S.C. Code Ann. §58-5-230, "[t]he books and accounts of all public utilities shall be subject to the examination of the regulatory staff at any time."

⁴ According to S.C. Code Ann. Regs. § 103-517, "[a]ll books and records of the utility shall be maintained in accordance with the NARUC Uniform System of Accounts for Class A, B and C Sewerage Utilities to the extent applicable. Such records must be made available for examination by the ORS or its authorized representatives at all reasonable hours. Full cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by the ORS or its representatives." According to S.C. Code Ann. Regs. § 103-719, "[a]ll books and records of the utility shall be maintained in accordance with the NARUC Uniform System of Accounts for Class A, B and C Water Utilities to the extent applicable, and such records must be made available for examination by the ORS or its authorized representatives at all reasonable hours. Full cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by the ORS or its representatives."

is acceptable to ORS.”⁵ ORS Motion, pp. 3-4; Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008.

In DIUC’s Response to ORS’s Motion (“DIUC Response”), DIUC asserted that it was not necessary to provide ORS with the specific invoices that comprise and support its request to recover \$269,356 from ratepayers and there was nothing more to compel from the Company. *See* DIUC Response, p. 6. At one point in its Response, DIUC states, “[t]he supposition that there has been some sort of incomplete response or that DIUC intentionally withheld information is totally ridiculous.” DIUC Response, p. 8. However, at oral argument, counsel for DIUC conceded that DIUC could in fact provide the requested reconciliation to ORS but did not want to because of possible strategic reasons. *See* Oral Argument Tr. p. 57, l. 15 through p. 61, l. 19. Instead, counsel for DIUC contended that, while the requested reconciliation could be provided, it should only be provided to ORS after the Commission issues a final Order. *See* Oral Argument Tr. p. 50, ll. 9-13; p. 70, l. 23 through p. 71, l. 24. While DIUC has asserted there is nothing more for the Company to produce to ORS, based on the record and arguments presented by both parties at the recent hearing, the Commission has determined that DIUC can produce a reconciliation of individual GA invoices that it has previously refused to produce. Additionally, while counsel for DIUC suggested that it should be permitted to provide the ORS requested reconciliation *after* the Commission’s final Order on the merits is issued, the provision of a reconciliation subsequent to the issuance of the final order would prohibit the Commission and ORS from complying with the statutory obligations to carry out their important responsibilities consistently, within an “objective and measurable framework.” Oral Argument Tr. p. 81, ll. 20-24; *See Daufuskie Island Util. Co., Inv. v. S.C. Office of Regulatory Staff*, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019).

⁵ *See* Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008.

Both Court Opinion No. 27905, and other case law,⁶ require that this Commission and ORS evaluate the evidence with an objective analysis based upon a measurable framework. In order to conduct the required analysis, ORS must first be afforded the opportunity to review and analyze the specific GA invoices that comprise the amount of \$269,356 for which DIUC seeks recovery on remand and in this proceeding. Therefore, the Commission has determined and rules that ORS must be provided with the requisite data to conduct its regulatory analysis consistent with the clear instructions from the Supreme Court.

After a careful review and consideration of the positions and arguments presented to the Commission by both parties during oral argument, the Commission rules and finds that DIUC has additional relevant rate case information that must be produced, and that ORS's Motion is valid and well-founded under the law and consistent with the requirements mandated by the Supreme Court. In addition, statutes, regulations, Commission Orders, and previous commitments from DIUC necessarily require a finding that ORS is entitled to access this specific Company information. The strategic concerns referenced by counsel for DIUC do not serve as sufficient legal justification to warrant the Commission to allow DIUC to withhold the requested Company data from ORS.

After the conclusion of Oral Argument and after discussion this Commission voted unanimously to grant ORS's Motion to Compel DIUC to provide the reconciliation of GA invoices that comprise the \$269,356 sought by DIUC on remand and in this proceeding as well as other relevant documents that ORS requires to conduct and complete its required review. *See* Commission Order No. 2020-700. This Commission Order does not address, decide or bind the

⁶ *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011).

Commission as to how it might rule on the Company request for recovery of rate case expenses in this proceeding on remand or future proceedings. The Commission will not make any decision or ruling on recovery of rate case expenses, or any other recovery, until after ORS conducts its analysis and submits its conclusions and recommendations to the Commission and the Commission reviews any comments or objections submitted by the Company. In addition, this Commission Order does not address, decide or bind the Commission as to how it might rule in any future company rate case filings as to the regulatory treatment of any remaining rate case invoices that are not subject to the Company request for recovery of \$269,326 on remand and in this proceeding.

It is therefore ordered that within ten (10) days of this Order:

1. DIUC must provide information to ORS including, but not limited to, a detailed reconciliation showing what invoices constitutes the \$269,356 in contested GA invoices, including partial invoices, that comprise and support the Company request seeking recovery of \$269,356 from its customers on remand and in this proceeding; and
2. DIUC must provide any other appropriate related materials as may be requested by ORS including, but not limited to, complete responses to ORS for any requests for follow-up information that may serve to support the individual invoices for which DIUC seeks recovery in this contested proceeding.
 - a. DIUC must provide detailed descriptions of the invoices including, but not limited to, the business purpose of the work performed; the dates and hours of the work described; and the name of the employee that performed the work.

- b. If an invoice includes travel expenses, DIUC must provide supporting documentation for travel expenses including, but not limited to, business purpose, name of employee, and receipts for all expenses.

The Motion to Compel is hereby granted.

BY ORDER OF THE COMMISSION:

Justin T. Williams, Chairman

ATTEST:

Florence P. Belser, Vice-Chairman

(SEAL)

October __, 2020
Columbia, South Carolina